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**In the
Supreme Court of the United States**

OCTOBER TERM, 1925

No. 106

RHODE ISLAND HOSPITAL TRUST COMPANY,
EXECUTOR OF GEORGE BRIGGS, Deceased,
Plaintiff in Error

vs.

RUFUS A. DOUGHTON, *Commissioner of Revenue of the
State of North Carolina*

In Error to the Supreme Court of the State of North Carolina
BRIEF OF PLAINTIFF IN ERROR

JOHN M. ROBINSON,
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1870
The first of the year
was a very cold one
and the snow was deep.

The weather was very
pleasant and the snow
was not so deep.

A very cold day
and the snow was deep.

The weather was very
pleasant and the snow
was not so deep.

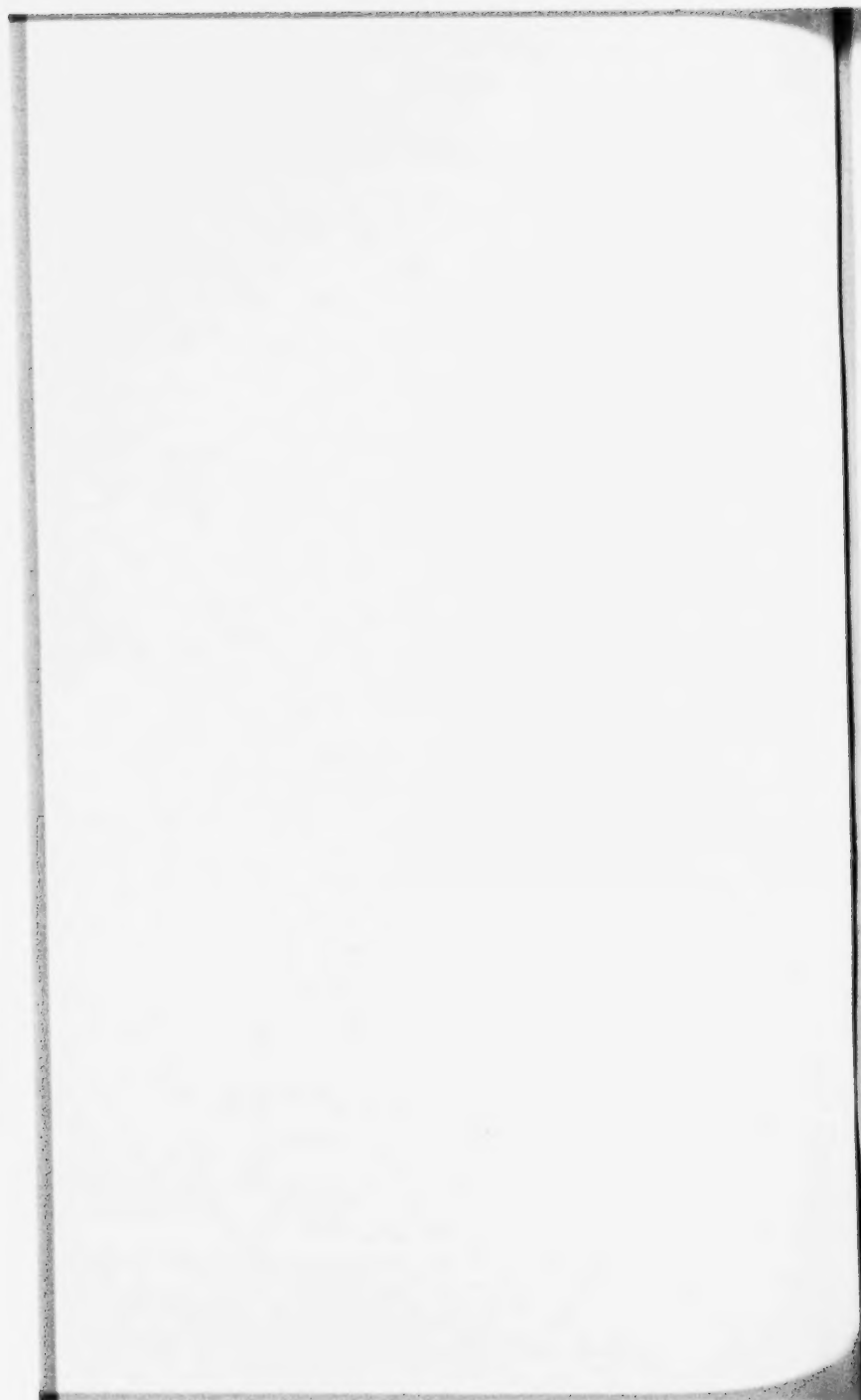
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of Counsel.

STATEMENT OF FACTS

This case is here on writ of error to the Supreme Court of North Carolina, to test the levy of an inheritance tax upon the transfer of stock in a foreign corporation owned by a non-resident. The certificates of stock were at all times physically out of the state; the beneficiaries, receiving said stock under the will, were all non-residents; and the transfer of the stock took place out of the state.

The case has been tried upon an agreed statement of facts, which may be found in the Record, beginning at page 22. We recite the following:

(1) George Briggs, the intestate, was a resident of, and domiciled in, the State of Rhode Island, at the time of his death, October 29, 1919, and had never resided in the State of North Carolina (Record, 22).

(2) The plaintiff herein, Rhode Island Hospital Trust Company, was appointed executor of the last will and testament of said Briggs, and duly qualified as such before the Municipal Court of the City of Providence, Rhode Island, on November 25, 1919 (Record, 22).

(3) Among other property devised or bequeathed by said will was stock in the R. J. Reynolds Tobacco Company (hereinafter called the Tobacco Company), valued at the time of the testator's death at \$114,100.00, and dividends earned in the same company, represented by dividend scrip issued to him, to the amount of \$1,534.40 in value at the time of his death (Record, 22).

(4) The Tobacco Company is now, and at all times mentioned has been, a corporation created under the laws of the State of New Jersey (Record, 22).

(5) The stock books of the Tobacco Company are located in the City and State of New York, where its shares of stock are transferred by the Equitable Trust Company, its transfer agent (Record, top p. 20).

(6) The charter of the Tobacco Company states: "The location and principal office of such corporation in the State of New Jersey is at No. 765 Broad Street, in the City of Newark, in the County of Essex" (Record, 24).

(7) None of the certificates of stock in question were in the State of North Carolina, at the time of the testator's death, and never had been during the time they were owned by said testator (Record, 32).

(8) None of the recipients of said stock under the will were, or ever had been, citizens or residents of the State of North Carolina (Record, 32).

(9) Two-thirds in value of the property of said Tobacco Company is located in or near the City of Winston-Salem, North Carolina (Record, 32).

(10) Before a foreign corporation is permitted to do business in the State of North Carolina it must comply with the provisions of section 1181 of the Consolidated Statutes of the State, formerly section 1194 of the Revisal. A copy of this section will be found in the appendix to this brief at page 25. It simply contains the customary provisions in reference to filing a copy of the charter, filing a statement showing the authorized and issued capital stock, the principal office in the state, the name of the agent in charge thereof, the character

of business transacted, and the names and addresses of the officers and directors of the corporation.

(11) For the purpose of obtaining permission to do business in the State of North Carolina the Tobacco Company, on or about August 14, 1906, complied with the provisions of said section 1181 Consolidated Statutes (Record, 22), and duly obtained a certificate granting to it authority to transact business in the State of North Carolina (Record, 27).

(12) Thereafter the Tobacco Company annually paid the license tax required of foreign corporations to do business in North Carolina, accompanied by the requisite annual report (Record, 27).

(13) The tax in the present case was levied under chapter 90, Public Laws of 1919 of North Carolina (now section 7767 *et seq* of Consolidated Statutes). The statute undertakes to impose an inheritance tax upon the transfer of all real and personal property of every kind and description, and "such property or any part thereof or interest therein within this State" which shall pass by will or by operation of law from a testator to his legatees or devisees, or from an intestate to his heirs or distributees; and section 6, in part, provides:

"The words, 'such property or any part thereof or interest therein within this State,' shall include in its meaning bonds and shares of stock in any incorporated company, incorporated in any other State or country, when such incorporated company is the owner of property in this State, and if 50 per cent. or more of its property is located in this State, and when bonds or shares of stock in such company not incorporated in this State, and

owning property in this State, are transferred by inheritance, the valuation upon which the tax shall be computed, shall be the proportion of the total value of such bonds or shares which the property owned by such company in this State bears to the total property owned by such company, and the exemptions allowed shall be the proportion of exemption allowed by this act, as related to the total value of the property of the decedent."

PROCEEDINGS BELOW

In performance of its duty as executor under the will of said Briggs, the plaintiff requested that the Tobacco Company transfer said stock to it. The Company replied that the transfer could not be made until the inheritance tax on said stock due to the State of North Carolina was paid, or waived by the Department of Revenue (Record, 16, 18).

The plaintiff then requested the Department of Revenue to waive the tax in order that said stock certificates could be transferred, and the estate of said Briggs could be settled (Record, 5). This request for a waiver was denied and the plaintiff was informed that an inheritance tax of twenty-six hundred fifty-eight and eighty-five one hundredths (\$2,658.85) dollars would have to be paid before the certificates of stock could be transferred (Record, 12).

If the Tobacco Company had transferred the certificates without the waiver it would have been liable

for the tax as section 6 (sub-section 7), of the act in question provided:

"Any incorporated company not incorporated in this State and owning property in this State which shall transfer on its books the bonds or shares of stock of any decedent holder of shares of stock in such company exceeding in par value five hundred dollars, before the inheritance tax, if any, has been paid, shall become liable for the payment of said tax, and any property held by such company, in this State shall be subject to execution to satisfy same. A receipt or waiver signed by the State Tax Commission of North Carolina shall be full protection for any such company in the transfer of any such stock or bonds."

The plaintiff duly gave notice of appeal from the above ruling of the Commissioner to the Superior Court of Wake County (Record, 13), in accordance with procedure outlined in a state statute, allowing such appeals.

The plaintiff, also acting under a relevant state statute, paid said tax under protest and brought an action to recover it. We do not set forth copies of the state statutes mentioned in this and the preceding paragraph as it is not denied that the plaintiff adopted the correct procedure for the protection of its rights. In fact, the following statement appears in the Record at page 19:

"It is admitted that if the statute imposing the inheritance tax in this instance is unconstitutional, the plaintiff is entitled to judgment against the defendant for \$2,658.85, with interest and costs."

In the Superior Court of Wake County, upon consent of the parties, the appeal from the Commissioner and the action instituted by the plaintiff were consolidated (Record, 21), and, as heretofore stated, this consolidated action was then tried upon an agreed statement of facts (Record, 22). A judgment was rendered therein sustaining the validity of the statute, as applied to the plaintiff, and upholding the assessment of the Commissioner (Record, 35).

From the judgment so rendered the plaintiff appealed to the Supreme Court of North Carolina, where said judgment was affirmed, Chief Justice Clark dissenting (187 N. C., 263). From the decision so rendered this writ of error was prosecuted.

FEDERAL QUESTION INVOLVED

There can be no doubt about the fact that the plaintiff at all times insisted upon its rights under the Federal Constitution. At every step in both proceedings below the plaintiff contended that the state statute, under which the inheritance tax was levied, was in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and that an enforcement of said assessment and a collection of said tax would deprive the plaintiff of property without due process of law in violation of Section 1 of the Fourteenth Amendment of the Federal Constitution, which was expressly set up and relied upon (Record, 14, 17).

The opinion of the Supreme Court also states:

“Plaintiff’s next position is, that if the law is to be construed so as to authorize an imposi-

tion of the tax in question, then the statute is unconstitutional, both under Article I, section 17, of the State Constitution, and also under the Fourteenth Amendment to the Constitution of the United States."

ARGUMENT

The State Supreme Court, in its opinion herein, says: "It is clear, we think, from the language used, that the Legislature intended to levy the tax imposed and which is sought to be recovered in this suit." The Court then proceeds to the question as to whether or not the state statute, as thus construed and applied, violates the Federal Constitution; and, as above stated, this question is answered in the negative.

I

THE SHARES OF STOCK IN THE TOBACCO COMPANY WERE NOT PROPERTY WITHIN THE STATE OF NORTH CAROLINA

For the sake of clarity, we here repeat that:

(a) George Briggs, the owner of the stock, was a non-resident of the State of North Carolina.

(b) The Tobacco Company was a foreign corporation.

(c) The actual certificates of stock were at all times physically outside the State of North Carolina.

Upon these admitted facts, it would seem too clear for argument that the stock in question was not, in any

sense, property within the taxing state. The fact that the corporation itself owned property in the state is, of course, beside the question.

The distinction between the ownership of shares of stock in a corporation and ownership of the property of the corporation is a fundamental concept of the law of corporations. This distinction has heretofore been fully recognized by the law of North Carolina. In *Pullen vs. Corporation Commission*, 152 N. C., 553, the Court said:

"It is likewise well settled by the language of our state Constitution, by many decisions of this court, and of the Supreme Court of the United States, and now generally accepted law, that the property of a shareholder of a corporation in its shares of stock is a separate and distinct species of property from the property, whether real, personal or mixed, held and owned by the corporation itself as a legal entity. It would be useless to cite authority to support a proposition so well established and generally accepted."

In the instant case the above quotation is set forth in the dissenting opinion of Chief Justice Clark, who adds: "Therefore it follows that the decedent as a shareholder in the Reynolds Company had no property here and we can neither tax it nor its devolution."

The same learned judge in his dissent herein, says: "It is therefore inexplicable how the state has jurisdiction to tax the property of the estate of this decedent who resided in Rhode Island and had no property here, or tax its devolution by the laws of the domicile of the owner over which this state can have no control."

See *supra* at 38 *Harvard Law Review* at page 393.

"Whether under the Decedent shareholder or the corporation on whose shares it is deemed to be a succession one is domiciled with in the state, collectors and legislators brought jurisdiction in the present within the state of property owned by such corporation. Since, however, the property belongs to the corporation, not to the shareholder or his successor, both before and after the shareholder's death, and with the intangible interest in the corporation represented by the shares has changed hands, no transfer has taken place which depends for its validity in any way upon the laws of the state in which the property lies, and there is consequently no jurisdiction in me. The entire case therefore almost unanimously overruled these attempts to have rights determined either that the state in question did not sufficiently manifest any such intention in relation to the part of the legislature, or that if it did it was so manifestly contrary to the corporate will as to be unconstitutional."

See 38 *Harvard Law Review* at page 393. Professor Dwight D. Davis, after referring to decisions in several cases, says:

"In *Scott v. Cavell*, however, the matter has been held by the *Michigan Supreme Court* (1892) that in *Boyd v. The State*, the Court allowed a tax on the estate of a non-resident decedent under a statute imposing an inheritance tax upon stock of a foreign corporation based on the proportional value of the corporate property within

the state where the majority of its property was within the state. The decision was based upon the convenient principle of designating the corporate location, that is, assuming that the decedent owned property within the state which was transferred to his heirs although in fact he owned no property within the state and his death transferred no title to property located outside.

On a matter of fact, the decision in the instant case seems to stand alone. It is contrary to the holding in the following cases:

- Shaw vs. Shaw*, 280 (Cal., 1941)
- Shaw vs. Shaw*, 28 (Ohio, 1934)
- Shaw vs. Shaw*, 276 (Ill., 41)
- Wicks vs. Wicks*, 223 (Miss., 35)
- Shaw vs. Wicks*, 222 (Cal., 1934)
- Shaw vs. Wicks*, 192 (N. Y., 41)
- Wicks vs. Shaw*, 107 (N. Y., 35), 122

The court has decided that the property of the shareholders in their respective shares is distinct from the corporate property, franchise and capital stock.

- Shaw vs. Wicks*, 222 (N. Y., 41)
- Shaw vs. Wicks*, 222 (N. Y., 41)

Furthermore, in the *Wicks* case, it was stated: "It is well settled that the property of the shareholders in their respective shares is distinct from the corporate property, franchise and capital stock, and may be separately taxed (being cases); and the ruling in the case cited in *Shaw* does not proceed upon the view that shares are personal property, and having no situs, therefore, are taxable in the state of the owner. Clearly, whether the corporation is foreign or domestic,

We submit that the stock in question could not, in any sense, be properly regarded as property in North Carolina. The owner was not a resident. The corporation was a New Jersey one. The certificates themselves were physically out of the state. Any transfer of said certificates must have been effected out of the state. There is no contention, we assume, that the state could have exercised any control over the transfer of said stock from one owner to the other. Nor have we heard it contended that the stock, prior to the decedent's death, was subject to an *ad valorem* tax in North Carolina. In other words, that state had no jurisdiction over the property itself or the transition thereof.

The state Supreme Court, in an addendum to the principal opinion, after saying that the question presented simply involved the power of the Legislature, stated: "For the purposes of taxation, we think it is within the power of the Legislature to treat the pro rata interest of a stockholder in the corporate property as identical with that of the corporation, or simply as a share in the corporate entity."

This, we submit, simply amounts to saying that the Legislature, in order to authorize the collection of a tax on subjects beyond the state, may disregard fundamental principles and treat property actually belonging to one person as really belongs to another.

Even if the State of North Carolina, through its Legislature and Courts, could thus sweep aside the corporate entity in dealing with the relationship of stockholders to the property of a domestic corporation, we submit that it could not do so when dealing with the relationship of stockholders in a foreign corporation. The Tobacco Company is a corporation of New Jersey.

Hence the relation of the stockholders to the corporate property is determined by the law of that state and can not be changed by the State of North Carolina.

Supreme Council vs. Green, 237 U. S., 531.
Canada, Etc., R. R. vs. Gebhard, 109 U. S.,
529.

As stated in the Gebhard Case:

"A corporation 'must dwell in the place of its creation, and cannot migrate to another sovereignty' (*Bank vs. Earle*, 13 Pet., 578), though it may do business in all places when its charter allows and the local laws do not forbid. *R. R. Company vs. Koontz*, 104 U. S., 12. But wherever it goes for business it carries its charter, as that is the law of its existence."

Inasmuch as the State of North Carolina did not grant the charter of the Tobacco Company, we submit that it cannot sweep it aside.

In the Green Case, *supra*, Chief Justice White, in speaking of the rights of a corporation organized in the State of Massachusetts, said:

"Moreover, as the charter was a Massachusetts charter, and the constitution and by-laws were a part thereof, adopted in Massachusetts, having no other sanction than the laws of that state, it follows by the same token that those laws were integrally and necessarily the criterion to be resorted to for the purpose of ascertaining the significance of the constitution and by-laws."

Of course, in the absence of evidence to the contrary, it is presumed that the relation of a stockholder to the corporate property is fixed by the State of New Jersey in accordance with the rules of the common Law, unaffected by statute.

Miller vs. Railroad, 154 N. C., 441.
Roberts vs. Pratt, 152 N. C., 731.

II

THE STATE OF NORTH CAROLINA WAS WITHOUT POWER TO IMPOSE THE TAX IN QUESTION AND ITS ATTEMPT TO DO SO DEPRIVED PLAINTIFF OF ITS ASSERTED FEDERAL RIGHTS.

From the admitted facts it is seen that the taxing state had no jurisdiction over the owner, or the property, or the transfer of said property. Consequently it had no power to collect the tax in question. Nor does it change the situation to say, as did the North Carolina Supreme Court, that the tax is "not upon the property itself, but upon its transfer, change of ownership or devolution."

For this Court in the recent case of *Frick vs. Commonwealth of Pennsylvania*, U. S., in speaking of the inheritance tax law of Pennsylvania, said:

"The tax which it imposes is not a property tax but one laid on the transfer of property on the death of the owner. This distinction is stressed by counsel for the State. But to impose either tax the State must have jurisdiction over the thing that is taxed, and to impose

either without such jurisdiction is mere extortion and in contravention of due process of law."

We quote the following from the dissenting opinion of Chief Justice Clark in the case at bar:

"As the devolution of the shares of stock in the R. J. Reynolds Company belonging to the decedent Briggs passed by operation of the laws of the state where he died domiciled, and the persons to whom it should pass by operation of law or the power to convey it by will is solely under the control of the State of Rhode Island, it is difficult to see what authority North Carolina has to tax such devolution or interfere with it in any way. If this state could tax the right of devolution at all, it could tax it 100 per cent., for there is no provision in the Constitution which limits the amount of inheritance tax."

It is, of course, elementary that the power of a state to tax is limited to persons, property and business within its domain.

State Tax on Foreign-Held Bonds, 82 U. S., 300.

Coe vs. Errol, 116 U. S., 517.

Dacey vs. Des Moines, 173 U. S., 193.

Bristol vs. Washington County, 177 U. S., 133.

Chief Justice Marshall, in characteristic virile language, says:

"All subjects over which the sovereign power of a state extends are objects of taxation;

but those over which it does not extend are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident." *McCulloch vs. Maryland* (1819), 4 Wheat (U. S.), 316, 429.

In 1872 in *State Tax on Foreign-Held Bonds, supra*, Mr. Justice Field expresses the thought on page 319 in the following:

"Property lying beyond the jurisdiction of the state is not a subject upon which her taxing power can be legitimately exercised. Indeed, it would seem that no adjudication would be necessary to establish so obvious a proposition.

"The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State."

Mr. Justice Harlan stated that:

"While the mode, form and extent of taxation are, speaking generally, limited only by the wisdom of the legislature, that power is limited by a principle inhering in the very nature of constitutional government, namely, that the taxation imposed must have relation to a subject within the jurisdiction of the taxing government." *Louisville & Jeffersonville Ferry Co. vs. Kentucky* (1903), 188 U. S., 385, 306, 47 L. Ed., 513, 518.

As stated by the Court in *Tyler vs. Dane County*, 289 Fed., 843, *supra*:

"No escape is seen from the conclusion that the tax here involved may not be justified on the theory that the transfer taxed was of an interest in property located in Wisconsin. On the contrary, the transfer was of distinct, though intangible, personal property transferred by universal succession from the decedent in Massachusetts to the complainants as executors appointed and resident in that state. . . . The transfer of the stock in question from the decedent to these complainants is effected by the laws of Massachusetts, and may be completed with the aid of the laws of those states which created the corporations, and it is apparent that such transfer receives no support, legal or otherwise, from the laws of Wisconsin."

Chief Justice Vinje, in discussing the application of the Wisconsin inheritance tax to a similar state of facts, said in the recent case of *Shepard vs. State*, 197 N. W., 344:

"The state must have jurisdiction of the subject-matter of the tax. Such subject-matter is the transfer of title to property from a decedent to another. If the state has nothing to do with such transfer it has no jurisdiction to impose an inheritance tax. Its right to impose (an inheritance) tax springs from its right to prescribe reasonable conditions for permitting and making the transfer. . . . But if the decedent was not a resident of the state at the time of his death and the person receiving it is a non-resident and the property to be transferred is without the state, then there is

no right to tax because the subject-matter is beyond the jurisdiction of the court. Either the property transferred must be within the state or the decedent must have died a resident thereof, or some recourse to the courts or laws of our state must be necessary to secure the transfer in order to confer jurisdiction to impose a valid tax."

In dealing with a similar situation, the Supreme Court of Massachusetts, speaking through Chief Justice Rugg, said in *Welch vs. Burrell*, 223 Mass., 87:

"Jurisdiction for the purpose of imposing a succession tax exists only when the exercise of some essential incident in the transfer of the title depends for its legality upon the law of the state levying the tax (citing cases). *Situs* of the shares of stock within the taxing state is the foundation of jurisdiction to tax. That *situs* ordinarily can be only at the domicile of the owner or at the domicile of the corporation (citing cases). . . . Jurisdiction is a matter of power over the particular *res* or subject. *Lamar vs. United States*, 240 U. S., 60. . . . The circumstance that there is property of the corporation in Michigan does not confer jurisdiction upon that state to impose a tax on the succession to the shares of stock of the corporation. That property does not in any direct sense belong to the shareholders. The full and complete legal title to it is in the corporation. It is impossible to predicate jurisdiction over non-resident shareholders in a foreign corporation merely upon the physical presence of property

belonging to that corporation within the territory of a state."

The correctness of our position is demonstrated by the fact that the title to, and ownership of, the property in North Carolina were absolutely unaffected by the death of Mr. Briggs. Before his death the title to said property was in the Tobacco Company. After his death it remained the same. No title to, or interest in, this property was transferred upon his death. That property was held in exactly the same way after his death as before. True the certificates of stock were transferred, but, as above seen, they were entirely separate and distinct from the North Carolina property.

III

THE FACT THAT THE TOBACCO COMPANY COMPLIED WITH THE STATE STATUTE IN ORDER TO DO BUSINESS THEREIN CONFERRED NO AUTHORITY ON THE STATE TO IMPOSE THE TAX IN QUESTION.

The State Supreme Court, in its opinion herein, repeats the fact that the Tobacco Company, in order to do business in the State, had complied with the provisions of section 1181 of the Consolidated Statutes (copied in the appendix hereto).

A reading of that section, however, will show that it contains no provision to the effect that a corporation, upon complying with its requirements, becomes, in any respect, a North Carolina corporation. On the contrary the section expressly provides that a corporation which has complied with its provisions may thereafter "withdraw" from the state in a prescribed manner, which is, of course, wholly inconsistent with the view

that compliance makes it a corporation of North Carolina.

Indeed it is not clear exactly what effect such compliance was given by the State Supreme Court. The opinion below did not hold that a compliance with the Statute made the Tobacco Company in any way a North Carolina corporation. The opinion simply repeats several times that the corporation "is domesticated here," without attempting to show how such fact is related to the question in hand.

Formerly there were two sorts of statutes in the case of admission of foreign corporations to do business in a state—one making it a domestic corporation, and the other merely giving the foreign corporation, as such, permission to do business in the State.

Chapter 62 of the Public Laws of the North Carolina Assembly of 1899 was an example of the first kind of statute mentioned. It expressly provided that a foreign corporation, upon complying with its terms, became a domestic corporation. This statute was considered in the case of *Southern Railway Company vs. Allison*, 190 U. S., 326, wherein it was decided that a foreign corporation, which had complied with the statute, did not thereby lose its right to remove to the Federal Court an action brought against it by a resident of North Carolina.

Since the decision of this Court in the Allison Case, there has been dropped from the section in question the provision to the effect that a foreign corporation, upon complying with its terms became a domestic corporation. Hence there is now no room whatever for the contention that it does become such.

In *Pennsylvania Railroad Company vs. Railroad*, 118 U. S., 290, the Court said:

"It does not seem to admit of question that a corporation of one State, owning property and doing business in another State by permission of the latter, does not thereby become a citizen of this State also. . . . To make such a company a corporation of another State, the language used must imply creation or adoption in such form as to confer the power usually exercised over corporations by the State, or by the legislature, and such allegiance as a State corporation owes to its creator. The mere grant of privileges or powers to it as an existing corporation, without more, does not do this, and does not make it a citizen of the State conferring such powers."

It will, of course, be noted that the state statute (C. S., 1181) does not purport to deal with the stockholders or their liabilities. It does not purport to change the common law relation of a stockholder to the corporate property. The provisions of the statute operate directly upon the corporation itself, without attempting to reach beyond it.

It is true that a state may impose valid conditions upon a foreign corporation seeking to enter its borders to transact business. But we submit that, even if it attempted to do so, it could not impose the condition that stock in such corporation, held outside the state by a non-resident, should be subject to its inheritance tax.

In speaking of this question the Supreme Court of Wisconsin said in *Shepard vs. State*, 197 N. W., at page 347:

"The other statute relied upon by the Attorney General is Section 226.02, Stats., 1923, formerly section 1770-b, prescribing the conditions upon which foreign corporations may do business in this state. The argument is that by accepting the conditions of that section they have agreed to obey and abide by our laws, and therefore cannot question their validity. Assuming, but not deciding, that a corporation can bind its stockholders, no lengthy discussion is necessary to refute the fallacy of this claim. The foreign corporations by agreeing to abide by the conditions of section 226.02 agree to abide by and obey our valid laws, not our void and unconstitutional laws. If we required them to do the latter, the Federal Supreme Court would speedily say we could not lawfully do so. *Terrill vs. Burke Const. Co.*, 257 U. S., 529, 42 Sup. Ct., 188, 66 L. Ed., 352, 21 A. L. R., 186. It there held that a state cannot exact as a condition for doing business within the state obedience to a state law that is repugnant to constitutional provisions. This court has frequently said that an unconstitutional law is no law at all. It has no force or efficacy, and cannot be obeyed. The argument that since the tax upon non-residents is the same as upon residents the law is therefore a valid and fair one is of no weight, because the fact that an illegal tax upon a non-resident is no greater than a legal tax upon a resident does not justify the former. Were such an argument a valid one, we could tax the whole world."

In *Tyler vs. Dane County*, *supra*, the Court reached the same conclusion. After citing *Looney vs. Crane*, 245 U. S., 178, *International Paper Company vs. Massachusetts*, 246 U. S., 135, and *Terrall vs. Burke*, 257 U. S., 529, for the proposition that a state may not tax a foreign corporation as to its property outside the confines of the state, even under the guise of a privilege or franchise tax, imposed apparently as a condition of admission into the state, the Court said:

"If a corporation may not be taxed on its own property located outside the state as a condition for doing business within it, it would seem to follow logically that it may not be required to bring with it into the state, for succession purposes, property of third persons, to-wit, shares in its stock belonging to its non-resident stockholders. The latter proposition involves an extension of the state's power at least one step beyond that involved in the former. Viewed from this angle, I am of the opinion that the *situs* of the stock transferred to the plaintiffs was not validly changed to Wisconsin."

CONCLUSIONS

We submit that this case simply presents an illustration of the part of the State to be taken, although the questions in question and the parties in interest are all within its borders. If this be true, then necessarily the rights of the constitutional rights and must fall.

Respectfully submitted:

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APPENDIX 2

hundred dollars, to be recovered, with costs, in an action to be prosecuted by the attorney-general, who shall prosecute such actions whenever it appears that this section has been violated. This section does not apply to railroad, banking, express or telegraph companies which, prior to March 9, 1915, had been licensed to do business in this state, or were engaged in business in this state, having a regularly appointed agent upon whom service of process could be made, located in this state.

